

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

FRANK DUNLAP,

Case No. 2:19-cv-01166-APG-VCF

Plaintiff

ORDER

JOE LOMBARDO,

Defendant

V.

8 This action began with a *pro se* civil rights complaint filed under 42 U.S.C. § 1983 by a
9 state prisoner. On July 10, 2019, Magistrate Judge Ferenbach issued an order denying the
10 application to proceed *in forma pauperis*, without prejudice, because the application was
11 incomplete. ECF No. 3. Judge Ferenbach ordered plaintiff Frank Dunlap to file a fully complete
12 application to proceed *in forma pauperis* or pay the full filing fee of \$400.00 within 30 days from
13 the date of that order. *Id.* at 2. The 30-day period has now expired, and Dunlap has not filed
14 another application to proceed *in forma pauperis*, paid the full filing fee, or otherwise responded
15 to Judge Ferenbach’s order.

District courts have the inherent power to control their dockets and “[i]n the exercise of that power, they may impose sanctions including, where appropriate . . . dismissal” of a case. *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action, with prejudice, based on a party’s failure to prosecute an action, failure to obey a court order, or failure to comply with local rules. *See Ghazali v. Moran*, 46 F.3d 52, 53-54 (9th Cir. 1995) (affirming dismissal for noncompliance with local rule); *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 1992) (affirming dismissal for failure to comply with an order requiring amendment of complaint); *Carey v. King*, 856 F.2d 1439, 1440-41 (9th Cir. 1988)

1 (affirming dismissal for failure to comply with local rule requiring *pro se* plaintiffs to keep court
2 apprised of address); *Malone v. U.S. Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987) (affirming
3 dismissal for failure to comply with court order); *Henderson v. Duncan*, 779 F.2d 1421, 1424
4 (9th Cir. 1986) (affirming dismissal for lack of prosecution and failure to comply with local
5 rules).

6 In determining whether to dismiss an action for lack of prosecution, failure to obey a
7 court order, or failure to comply with local rules, the court must consider several factors: (1) the
8 public's interest in expeditious resolution of litigation; (2) the court's need to manage its docket;
9 (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of cases on
10 their merits; and (5) the availability of less drastic alternatives. *See Thompson*, 782 F.2d at 831;
11 *Henderson*, 779 F.2d at 1423-24; *Malone*, 833 F.2d at 130; *Ferdik*, 963 F.2d at 1260-61;
12 *Ghazali*, 46 F.3d at 53.

13 Here, the first two factors (the public's interest in expeditiously resolving this litigation
14 and my interest in managing the docket) weigh in favor of dismissal. The third factor (risk of
15 prejudice to the defendants) also weighs in favor of dismissal, since a presumption of injury
16 arises from the occurrence of unreasonable delay in filing a pleading ordered by the court or
17 prosecuting an action. *See Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir. 1976). The fourth
18 factor (public policy favoring disposition of cases on their merits) is greatly outweighed by the
19 factors in favor of dismissal discussed herein. Finally, a court's warning to a party that his
20 failure to obey the court's order will result in dismissal satisfies the "consideration of
21 alternatives" requirement. *Ferdik*, 963 F.2d at 1262; *Malone*, 833 F.2d at 132-33; *Henderson*,
22 779 F.2d at 1424. Judge Ferenbach's order expressly stated: "IT IS FURTHER ORDERED that
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1 if Plaintiff does not timely comply with this order, dismissal of this action may result.” ECF No.
2 3 at 2. Thus, Dunlap had adequate warning that dismissal would result from his noncompliance.

3 It is therefore ordered that this action is dismissed without prejudice based on Dunlap’s
4 failure to file another application to proceed *in forma pauperis* or pay the full filing fee in
5 compliance with the July 10, 2019 order.

6 It is further ordered that the Clerk of Court will close the case and enter judgment
7 accordingly.

8 Dated: August 19, 2019.

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11 ANDREW P. GORDON
12 UNITED STATES DISTRICT JUDGE
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